90-1712

Supreme Court, U.S.
FILED
MAY 7 1991
OFFICE OF THE CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM 1990

STATE OF NORTH CAROLINA,

Petitioner

v.

CARLTON J. SMITH,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

LACY H. THORNBURG
Attorney General

Robert J. Blum
Special Deputy Attorney General
Counsel of Record

G. Lawrence Reeves
Assistant Attorney General

H. Jefferson Powell
Special Counsel to the Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629
Telephone: 919-733-6012

Attorneys for Petitioner

QUESTIONS PRESENTED

I. DID THE SUPREME COURT OF NORTH CAROLINA ERR IN HOLDING THAT THE EXISTENCE OF "EXCLUSIVE" FEDERAL JURISDICTION OVER A FEDERAL ENCLAVE BARS THE EXERCISE OF CONCURRENT STATE JURISDICTION OVER JUVENILE MATTERS?

II. DID THE SUPREME COURT OF NORTH CAROLINA ERR IN HOLDING THAT A STATE COURT CANNOT REVIEW A UNITED STATES ATTORNEY'S CERTIFICATION UNDER 18 U.S.C. § 5032 THAT NO STATE COURT HAS JURISDICTION OVER A JUVENILE MATTER?

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

OPINION BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 5

I. The Proceedings Below. 5

II. The Decision Below. 8

REASONS FOR GRANTING THE WRIT

I. The Decision of the Supreme Court of North Carolina Misconstrued the Concept of "Exclusive" Federal Jurisdiction and, as a Result, Imposed Restrictions on State Concurrent Jurisdiction Inconsistent with the United States Constitution and Federal Law 10

II. The Decision of the Supreme Court of North Carolina Incorrectly Treated a United States Attorney's Certification under 18 U.S.C. § 5032 as Requiring it to Rule Against the Existence of State Jurisdiction 16

III. This Case Presents Important Questions of Federal Law That Have Not Been, But Should Be, Settled by This Court. 17

CONCLUSION 20

TABLE OF AUTHORITIES

CASES	PAGE
Asarco, Inc. v. Kadish, 490 U.S. 605 (1989)	.19
Atkinson v. State Tax Comm'n of Oregon, 303 U.S. 20 (1938)	.11
Bowen v. Johnston, 306 U.S. 19 (1939)	.8,11,12
Hancock v. Train, 426 U.S. 167 (1976)	.10,11
Howard v. Commissioners of Sinking Fund of City of Louisville, 344 U.S. 624 (1953)	.12
Kent v. United States, 383 U.S. 541 (1966)	.15
Kleppe v. New Mexico, 426 U.S. 529 (1976)	.10
Oregon v. Hass, 420 U.S. 714 (1975)	.19
Pacific Coast Dairy v. Department of Agriculture, 318 U.S. 285 (1943)	.12,13
Paul v. United States, 371 U.S. 245 (1963)	.8,10,11,12
Rewis v. United States, 401 U.S. 808 (1971)	.17
State v. DeBerry, 224 N.C. 834, 32 S.E.2d 617 (1945)	.8,11
State v. Smith, 328 N.C. 161, 400 S.E.2d 405 (1991)	....*passim*
Tafflin v. Levitt, 493 U.S. 455 (1990)	.19
United States v. A Juvenile Male, 819 F.2d 468 (4th Cir. 1987)	.7
United States v. Daye, 696 F.2d 1305 (11th Cir. 1983)	.8,11,12
United States v. Juvenile, 599 F. Supp. 1126 (D. Ore. 1984)	.13

United States v. Smith, 675 F. Supp. 307
(E.D.N.C. 1987), *rev'd*, 851 F.2d 706 (4th Cir. 1988) . . .6,7,8

United States v. Unzeuta, 281 U.S. 138 (1930) 8,11,12

United States v. Vancier, 515 F.2d 1378 (2d Cir.),
cert. denied, 423 U.S. 857 (1975) 9,16,18,19

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Art. I, § 8, cl. 17 2,10,11,15

18 U.S.C. § 13 (1990) 9

18 U.S.C. §§ 662a, 922 (1940 ed.) 13

18 U.S.C. §§ 5031 *et seq.* . . . . . *.passim*

18 U.S.C. § 5032 (1990) . . . . . *.passim*

28 U.S.C. § 1257 (1990) 2

Act of June 11, 1932, ch. 243 (72d Cong., lst Sess.) 13,14

N.C. Gen. Stat. § 7A-523 (1989) 3

N.C. Gen. Stat. § 7A-524 (1989) 4

N.C. Gen. Stat. § 104-7 (1985) 4,11

OTHER AUTHORITIES

The Federalist No. 43 11

S. Rep. No. 1011, 93d Cong., 2d Sess., reprinted in
(1974) U.S. Code Cong. & Admin. News,
pp 5283, 5286 14

41 Op. N.C. Att'y Gen. 580 (1971) 14

No.

IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM 1990

STATE OF NORTH CAROLINA,

Petitioner

v.

CARLTON J. SMITH,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioner, the State of North Carolina, by and through its undersigned counsel, the Honorable Lacy H. Thornburg, Attorney General of North Carolina, and Special Deputy Attorney General Robert J. Blum, Assistant Attorney General G. Lawrence Reeves, Jr., and Special Counsel to the Attorney General H. Jefferson Powell, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina entered on 7 February 1991, which remanded this case for the dismissal of three first-degree murder charges against Respondent.

OPINION BELOW

This petition seeks review of the published decision by the Supreme Court of North Carolina reported at *State v. Smith*, 328 N.C. 161, 400 S.E.2d 405 (1991), which is reproduced in the Appendix at A-1.

JURISDICTION

The judgment below, entered on 15 March 1991,[1] involved resolution of substantial questions of federal law and was not based on independent and adequate state grounds. *State v. Smith*, 328 N.C. 161, 165, 169, 400 S.E.2d 405, 407, 409 (1991). This Court therefore has jurisdiction to grant this petition for a writ of certiorari to the Supreme Court of North Carolina and to review its judgment pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution Article I § 8 cl. 17: The Congress shall have power ... To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

---

1 The opinion of the Supreme Court of North Carolina was filed on 7 February 1991. The mandate was stayed until 15 March 1991, on which date the clerk entered actual judgment.

18 U.S.C. § 5032 (1990): Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a state does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1),(2) or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1),(2),(3)), or section 922(p) of this title, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

N.C. Gen. Stat. §7A-523 (1989): Jurisdiction.

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be delinquent, undisciplined, abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect. For purposes of determining jurisdiction, the age of the juvenile either at the time of the alleged offense or

when the conditions causing the juvenile to be abused, neglected, or dependent arose, governs. There is no minimum age for juveniles alleged to be abused, dependent or neglected. For juveniles alleged to be delinquent or undisciplined, the minimum age is six years of age.

N.C. Gen. Stat. § 7A-524 (1989): Retention of jurisdiction.

When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until he reaches his eighteenth birthday. Any juvenile who is under the jurisdiction of the court and commits a criminal offense after his sixteenth birthday is subject to prosecution as an adult. Any juvenile who is transferred to and sentenced by the superior court for a felony offense shall be prosecuted as an adult for all other crimes alleged to have been committed by him while he is under the active supervision of the superior court. Nothing herein shall be construed to divest the court of jurisdiction in abuse, neglect, or dependency proceedings.

N.C. Gen. Stat. §104-7 (1985): Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.

The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State required for the sites for customhouses, courthouses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government.

Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the

jurisdiction so ceded shall continue no longer than the said United States shall own such lands. The jurisdiction ceded shall not vest until the United States shall have acquired title to said lands by purchase, condemnation, or otherwise.

So long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State.

STATEMENT OF THE CASE

On 24 August 1981, the respondent's aunt, cousin, and sister were found murdered in military dependents' quarters on the United States Marine Corps base at Camp Lejeune in Onslow County, North Carolina. The respondent was fifteen years old at the time of the murders. A state grand jury indicted the respondent for the murders, but the Supreme Court of North Carolina held, on 7 February 1991, that federal jurisdiction over Camp Lejeune precluded state prosecution of the respondent. This petition for a writ of certiorari seeks review of that decision.

I. The Proceedings Below.

The respondent became a suspect in the investigation of the 24 August 1981 murders soon after the bodies of his relatives were discovered. The parties have stipulated that the bodies were found in a residence located within a portion of Camp Lejeune described as "Area C" (A-39), which was acquired by the federal government in 1941. (A-35, A-36) On 24 August 1981 an Assistant United States Attorney contacted the state District Attorney's office with responsibility for Onslow County and inquired into that "office's position regarding federal or state

jurisdiction." (A-40) By a letter of the same date an assistant district attorney stated that it was his "understanding" that criminal offenses occurring on the Marine Corps installations in Onslow County "fall exclusively within the federal jurisdiction. Even assuming concurrent jurisdiction exists, we will defer to cognizant federal authorities in this case." (A-40) The federal authorities, however, were unable at the time to muster evidence sufficient to prosecute respondent.

Sometime after the bodies were discovered on Camp Lejeune, the defendant and his family moved to Oregon.

> In 1986 defendant attempted to enlist in the Oregon National Guard, at which time investigative officials at Camp Lejeune were contacted for release of defendant's medical information. That information, particularly the psychological part thereof, and a disclosure that a murder investigation was still pending kept defendant out of the Oregon National Guard. In an effort to help her son, defendant's mother contacted authorities at Camp Lejeune requesting that the investigation be closed. Thereupon, Naval Investigative Service (NIS) agents contacted defendant and members of his family and had several interviews with them. During one such interview, on 30 June 1986, defendant made an incriminating statement to NIS agents, at which time he was arrested and taken into custody.

United States v. Smith, 675 F.Supp. 307, 308-09 (E.D.N.C. 1987), *rev'd*, 851 F.2d 706 (4th Cir. 1988).

The federal government made two unsuccessful attempts to prosecute respondent for the 1981 murders. The first attempt, begun on 8 July 1986, consisted of the filing of a juvenile

information. Pursuant to 18 U.S.C. § 5032, an Assistant United States Attorney certified that the State of North Carolina did not have jurisdiction over the "acts of juvenile delinquency alleged in this case" because they had "occurred on Marine Corps Base, Camp Lejeune, North Carolina, a military reservation acquired for the use of the United States and under exclusive jurisdiction thereof." (A-43) A subsequent motion to transfer respondent to United States District Court for trial as an adult was allowed (A-20), but the Court of Appeals reversed, holding that the transfer violated the *ex post facto* clause of the Constitution. *United States v. A Juvenile Male*, 819 F. 2d 468 (4th Cir. 1987).

The federal government's second attempt to prosecute respondent began on 7 July 1987 with a grand jury indictment of respondent for three counts of first-degree murder. The Court of Appeals ultimately held, on interlocutory appeal, that the earlier initiation of juvenile proceedings against the respondent precluded the federal government from later prosecuting him as an adult. *United States v. Smith*, 851 F.2d 706 (4th Cir. 1988). The federal charges were dismissed in December 1988. (A-23)

On 13 December 1988, an Onslow County grand jury returned indictments charging respondent with three counts of first-degree murder in connection with the 1981 deaths. The respondent entered pleas of not guilty to these charges and subsequently filed two motions to dismiss for lack of jurisdiction. One of respondent's motions contended that the State had no jurisdiction because the murders alleged occurred on "an area of exclusive federal jurisdiction." (A-44) The Superior Court denied respondent's motions on 23 February 1989 (A-25), and the Supreme Court of North Carolina allowed respondent's petition for review by writ of certiorari. On 7 February 1991, the Supreme Court reversed the Superior Court's denial of respondent's motions to dismiss and remanded the case for dismissal of the three murder charges pending against respon-

dent. The Supreme Court based its decision on its interpretation of federal law. *State v. Smith*, 328 N.C. 161, 400 S.E.2d 405. (A-1) The Supreme Court of North Carolina and Chief Justice Rehnquist as Circuit Justice subsequently denied petitioner's applications for a stay of the mandate pending the timely filing of a petition for a writ of certiorari and the final determination of the matter by this Court. (A-32, A-33)

II. The Decision Below.

The Supreme Court of North Carolina held in this case that as a matter of federal law the state Superior Court lacked jurisdiction. The Supreme Court cited several decisions [2] for the proposition that the federal government alone has jurisdiction over prosecutions related to crimes committed in areas ceded to the United States. *Smith*, 328 N.C. at 165-66, 400 S.E.2d at 407-08. The Supreme Court concluded that "[i]t appears from these cases that the Superior Court, Onslow County, does not have jurisdiction to try the defendant," *id.* at 166, 400 S.E.2d at 408, and stated that "we believe [the Secretary of the Navy] accepted exclusive jurisdiction as completely as he could." *Id.* at 168, 400 S.E.2d at 409.

The opinion of the Supreme Court of North Carolina noted the State's argument that cases such as *Paul v. United States*, 371 U.S. 245 (1963), recognize that the existence of federal jurisdiction is not inconsistent with state concurrent jurisdiction and that Congress has acted clearly and unequivocally to preserve state concurrent jurisdiction over juvenile offenses. *See*

---

2 *United States v. Unzeuta*, 281 U.S. 138, (1930); *Bowen v. Johnston*, 306 U.S. 19 (1939); *United States v. Daye*, 696 F.2d 1305 (11th Cir. 1983); and *State v. DeBerry*, 224 N.C. 834, 32 S.E.2d 617 (1945).

18 U.S.C. § 5032. The Supreme Court nonetheless concluded that the State's argument was foreclosed by the fact that "the United States Attorney certified to the United States District Court pursuant to 18 U.S.C. § 5032 that the courts of North Carolina did not have jurisdiction." 328 N.C. at 167, 400 S.E.2d at 408. The Supreme Court cited *United States v. Vancier*, 515 F.2d 1378 (2d Cir.), *cert. denied*, 423 U.S. 857 (1975), as holding that such a certification was unreviewable, and treated *Vancier* as controlling:

> Because we are dealing with a federal question we must look to the federal courts for guidance. If we must accept the United States Attorney's certification as final that the courts of this State do not have jurisdiction, then 18 U.S.C. § 5032 is not helpful to the State.

328 N.C. at 167-68, 400 S.E.2d at 409. Moreover, the Supreme Court clearly appeared to refer to *Vancier* when it stated:

> Bound as we are by the federal court's interpretation of this federal question, we must hold that the Superior Court, Onslow County, does not have jurisdiction.

ID. at 169, 400 S.E.2d at 409. One Justice concurred in the decision of the Court on the ground that the federal courts had exclusive jurisdiction because of the federal Assimilative Crimes Act, 18 U.S.C. § 13. 328 N.C. at 174, 400 S.E.2d at 412 (Martin, J., concurring).

REASONS FOR GRANTING THE WRIT

I. The Decision of the Supreme Court of North Carolina Misconstrued the Concept of "Exclusive" Federal Jurisdiction and, as a Result, Imposed Restrictions on State Concurrent Jurisdiction Inconsistent with the United States Constitution and Federal Law.

The United States Constitution grants Congress power "[t]o exercise exclusive Legislation in all Cases whatsoever ... over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings." U.S. Const. Art. I § 8 cl. 17.[3] The language of the Plenary Powers Clause, read literally, suggests that federal jurisdiction over federal enclaves obtained with state consent is "exclusive" in the sense that all state law and all state jurisdiction is *ipso facto* eliminated. This Court, however, has never accorded the clause such a wooden reading. It is settled law that the federal "legislative jurisdiction acquired may range from exclusive federal jurisdiction with no residual state police power, to concurrent, or partial, federal legislative jurisdiction, which may allow the State to exercise certain authority." *Kleppe v. New Mexico*, 426 U.S. 529, 542 (1976) (citation omitted). In ceding jurisdiction, the state may limit or condition the jurisdiction it is surrendering. *Paul v. United States*, 371 U.S. 245, 268 (1963). State civil laws in existence remain in effect as long as they do not conflict with the federal purpose, *Id.* at 268-69 ("basic scheme" of state law existed at time of cession). Congress, for its part, may limit the

---

3 This clause is sometimes labelled the "Plenary Powers Clause." *See Hancock v. Train*, 426 U.S. 167, 178 (1976).

extent to which the United States actually accepts jurisdiction. *Atkinson v. State Tax Comm'n of Oregon*, 303 U.S. 20, 25 (1938). Where Congress intends to authorize acceptance of less than complete territorial jurisdiction, the portion of jurisdiction not accepted remains with the state even if the state intended to cede "exclusive" jurisdiction. *Id.*

In the present case, the crimes alleged took place on land acquired by the Department of the Navy in 1941 pursuant to a state statute consenting to "exclusive" federal jurisdiction over federal enclaves and explicitly reserving only the power to serve state judicial process. N.C. Gen. Stat. § 104-7. The Supreme Court of North Carolina believed itself obligated to deny the existence of state jurisdiction over the prosecution of the respondent based upon a series of decisions stating that the federal government has exclusive criminal law jurisdiction in federal enclaves acquired pursuant to Article I section 8 clause 17.[4] The Supreme Court of North Carolina has misunderstood the significance of the cases on which it relied. Those cases stand for the rule that an otherwise plenary cession of jurisdiction to the federal government does not implicitly reserve state criminal jurisdiction. The reason for such a rule is obvious: the enforcement of the criminal law is one of the highest attributes of sovereignty. The intended purpose of the Plenary Powers Clause was to enable Congress, to the extent it wishes, to exercise direct and plenary sovereignty in the national capital and in federal enclaves without interference from conflicting state authority. *See The Federalist*, No. 43; *Hancock v. Train*, 426 U.S. 167 (1976). Petitioner does not question the general rule upheld in

---

4 *United States v. Unzeuta*, 281 U.S. 138 (1930); *Bowen v. Johnston*, 306 U.S. 19 (1939); *United States v. Daye*, 696 F.2d 1305 (11th Cir. 1983); and *State v. DeBerry*, 224 N.C. 834, 32 S.E.2d 617 (1945).

cases such as *Bowen* and *Unzeuta*. See footnote 4, *supra*. The holdings in other cases, however, indicate that the general rule does not apply to the case at bar. [5]

In *Howard v. Commissioners of Sinking Fund of City of Louisville*, 344 U.S. 624 (1953), this Court recognized that even when the United States accepts exclusive jurisdiction over an area, that area does not cease to be a part of the state where it is located. *Id.* at 626. In *Howard*, this Court also recognized that a state may exercise its power over a federal area within its boundaries as long as the state does not interfere with the jurisdiction asserted by the federal government. *Id.* at 626-27. In *Paul v. United States*, 371 U.S. 245 (1963), this Court said that when the federal government acquires land from a state, state law existing at the time of the acquisition remains enforceable. *Id.* at 268. *Accord Pacific Coast Dairy v. Department of Agriculture*, 318 U.S. 285, 294 (1943) ("local law not inconsistent with federal policy remained in force until altered by national legislation"). These cases stand for the principle that "exclusive" federal jurisdiction need not be truly exclusive, a principle perhaps best explained in the words of Justice Frankfurter in his dissent in *Pacific Coast Dairy*:

---

5 In only one of the cases cited by the Supreme Court of North Carolina, *United States v. Daye*, 696 F.2d 1305 (11th Cir. 1983), was the argument made that Congress had acted to preserve state criminal jurisdiction. *Daye* held that a statute permitting states to assert jurisdiction over Indian territories did not authorize state jurisdiction over a crime committed in a ceded national park. *Daye* also involved a question of the adequacy of 18 U.S.C. § 5032 certification; however, the issue of whether the Juvenile Justice Act embodies a congressional authorization of state jurisdiction on federal enclaves was not raised.

> Enough has been said to show that the doctrine of "exclusive jurisdiction" over federal enclaves is not an imperative. The phrase is indeed a misnomer for the manifold legal phases of the diverse situations arising out of the existence of federally-owned lands within a state--problems calling not for a single, simple answer but for disposition in the light of the national purposes which the enclave serves. *If Congress speaks*, state power is of course determined by what Congress says. If Congress makes the law of the state in which there is a federal site as foreign there as is the law of China, then federal jurisdiction would really be exclusive. But short of such congressional assertion of overriding authority, the phrase "exclusive jurisdiction" more often confounds than solves the problems due to our federal system.

Id. at 300 (Frankfurter, J., dissenting) (emphasis added).

With regard to state power over juvenile matters, Congress has indeed spoken. Congress has said that the general policy of the federal government is to abstain in juvenile proceedings. Congress has said that juvenile delinquency is essentially a state and local problem that must be dealt with by state and local governments. The present Juvenile Justice Act, 18 U.S.C. §§ 5031 *et seq.*, embodies "the general policy of federal abstention in juvenile proceedings," *United States v. Juvenile*, 599 F.Supp. 1126, 1130 (D. Ore. 1984), a policy that predates North Carolina's cession of Area C of Camp Lejeune to the federal government. *See* 18 U.S.C. §§ 662a, 922 (1940 ed.); 72nd Congress, Session I, Ch. 243, June 11, 1932. The report of the Senate Judiciary Committee accompanying the Juvenile Justice and Delinquency Prevention Act of 1974, which was in effect on

24 August 1981, stated that juvenile delinquency is essentially a state and local problem which must be dealt with by state and local governments. S.Rep. No. 1011, 93d Cong., 2d Sess., reprinted in (1974) U.S. Code Cong. & Admin. News, pp 5283, 5286. Moreover, the 1974 legislative history implies a congressional intent that state jurisdiction over juveniles on federal enclaves is more than policy, i.e., that states have concurrent jurisdiction over juveniles and must refuse to exercise it before the federal government can proceed. This appears to be so regardless of the nature of the cession that transferred the property to the federal government. *Id.* at 5320. The language contained in the 1974 legislative history is as follows:

> A juvenile shall not be proceeded against in federal court *unless the state courts refuse jurisdiction,* or do not have adequate services available.

Id. (emphasis added). Although the 1932 Act uses different language, i.e., "any state that can and will assume jurisdiction," Ch. 243, such language is nevertheless consistent with the notion that Congress has for many decades intended that the states exercise concurrent jurisdiction over juvenile offenders even if the federal government has obtained "exclusive" jurisdiction by virtue of the cession.

Congress has consistently and emphatically stated its intent that the problem of juvenile delinquency on federal enclaves should be handled at the state and local community level whenever possible. Where adequate juvenile programs and services exist, as in North Carolina, Congress has chosen to require the federal courts to defer to state authority and to permit the states to deal with acts of juvenile delinquency. *See, e.g.*, 41 Op. N.C. Att'y Gen. 580 (1971). (A- 45) The decision of the Supreme

Court of North Carolina fails to respect the choice Congress has actually made, and thus defeats rather than furthers the purpose of the Plenary Powers Clause.

Finally, the Supreme Court of North Carolina believed that the fact that the present proceeding against respondent is a criminal prosecution of him as an adult undercut petitioner's argument. This suggestion misconstrues the question of jurisdiction presented by this case. The State concedes that normally it would not have jurisdiction over adult criminal matters. This defendant, however, was not an adult at the time he allegedly committed the offenses, and he therefore falls out of the routine "adult criminal" category. Although it is true that the respondent would be prosecuted as an adult, he arrived at this status by a substantially different route, i.e., as a juvenile offender. Thus, the state's jurisdiction over respondent has its origin in juvenile law, which is civil in nature. *See Kent v. United States*, 383 U.S. 541 (1966). Once jurisdiction attaches, as it did in 1981, it continues to exist notwithstanding the fact that the respondent is no longer a juvenile.

Nowhere in the Juvenile Justice Act is there any indication whatever that Congress limited its preference for state jurisdiction over acts of juvenile delinquency by a requirement that the state juvenile laws preclude prosecution as an adult in appropriate circumstances. The criminal acts of which respondent is accused occurred when he was fifteen years of age, a fact which put him squarely within the Juvenile Justice Act's reservation of state jurisdiction. The fact that respondent came of age before the State could gather sufficient evidence to proceed against him can have no effect on the State's jurisdiction. The Supreme Court of North Carolina has not only erroneously answered an important federal question, it has distorted established concepts of concurrent state jurisdiction. It is therefore imperative that this Honorable Court correct this error.

II. The Decision of the Supreme Court of North Carolina Incorrectly Treated a United States Attorney's Certification under 18 U.S.C. § 5032 as Requiring it to Rule Against the Existence of State Jurisdiction.

Before federal authorities may proceed against a juvenile for an act of delinquency, 18 U.S.C. § 5032 requires that the Attorney General or his delegate (in this case, the United States Attorney) certify after investigation that no state court has or will exercise jurisdiction over the juvenile with respect to the alleged delinquent act. Only if there is such a certification can the appropriate district court entertain a proceeding under the Juvenile Justice Act.[6] A certification under section 5032 requires the United States Attorney to make a legal determination as to the existence of state court jurisdiction. The Supreme Court of North Carolina mistakenly treated that legal determination as conclusive and unreviewable, citing *United States v. Vancier*, 515 F.2d 1378 (2d Cir.), *cert. denied*, 423 U.S. 857 (1975). 328 N.C. at 167-68, 400 S.E.2d at 408-09. In *Vancier*, the Second Circuit held that a *federal* district court could not review the accuracy of a United States Attorney's determination in deciding whether it could exercise jurisdiction under the Juvenile Justice Act. 515 F. 2d at 1381. The *Vancier* decision does not purport to preclude *state* courts from independently determining the existence of their own jurisdiction under the relevant federal and state law. A

---

6 The Attorney General -- in practice, as in this case, the United States Attorney of the relevant district -- may also make a section 5032 certification if he or she finds that the state lacks adequate "programs and services" or that the act alleged is a crime of violence and that there is a "substantial federal interest in the case or the offense." In the present case, the section 5032 certification was based solely on the belief of an Assistant U.S. Attorney that no state court had jurisdiction.

section 5032 certification is a prerequisite to the exercise of federal jurisdiction; it is not an ouster of state jurisdiction. To accord an Assistant United States Attorney's legal opinion final and unreviewable authority in *state* courts as to the existence of *state* jurisdiction contradicts the intent of Congress in enacting section 5032 and would constitute a dramatic change in the federal-state balance that Congress should not be presumed implicitly to have made. *See Rewis v. United States*, 401 U.S. 808 (1971).

III. This Case Presents Important Questions of Federal Law That Have Not Been, But Should Be, Settled by This Court.

The decision of the Supreme Court of North Carolina in this case involves questions of great legal and practical importance. The Supreme Court has created a restriction on state jurisdiction, announced as a rule of federal law, that applies incorrectly this Court's decisions on "exclusive" federal jurisdiction and contradicts the intention of Congress in enacting the Juvenile Justice Act. The potential practical consequences of leaving the judgment below undisturbed are far-reaching for at least two reasons. First, if followed by other courts, the decision below will compel the federal courts to deal with juvenile matters for which Congress has found the federal system ill-equipped. Second, the uncertainty created by *State v. Smith* may lead to nationwide disagreement among state officials over the scope of concurrent state jurisdiction and may deter state officials from addressing acts of juvenile delinquency occurring on federal enclaves. Some state officials may interpret this decision to mean that "exclusive" federal jurisdiction is indeed truly exclusive as to juvenile matters. Yet, other state officials may interpret this decision to mean that "exclusive" federal jurisdiction is truly exclusive as to juvenile matters only when a United States

attorney certifies that a state does not have concurrent jurisdiction. Still other state officials may interpret this decision to mean that "exclusive" federal jurisdiction is truly exclusive as to adult criminal matters but not necessarily truly exclusive as to juvenile matters.

The doctrinal effect of the Supreme Court's error is not limited to the particular issue of state concurrent jurisdiction over juvenile offenses in federal enclaves; the Supreme Court's decision, if allowed to stand, puts in question the continuing validity of any state concurrent jurisdiction in federal enclaves unless expressly reserved by the state. Unless this Court is prepared to permit its long-standing precedents upholding such jurisdiction to be eroded or overruled *sub silentio*, it should grant the State's petition and review the decision below.

The Supreme Court's interpretation of the effect of a section 5032 certification is, independently, an important question of federal law that ought to be decided by this Court. The Supreme Court thought itself compelled by the federal court of appeals decision in *United States v. Vancier* to accord a United States Attorney's legal opinion conclusive and unreviewable authority in a state court determination of state jurisdiction. *See Smith*, 328 N.C. at 167-68, 169, 400 S.E.2d at 409. This unprecedented ruling construes section 5032 to have worked a major change in the relationship between federal executive officials and state courts, a change which would raise serious constitutional questions and which should not be ascribed to a congressional

statute without the plainest of indications. Because the Supreme Court erroneously thought itself *bound by Vancier*, [7] it did not examine the basis for its self-imposed restriction on state jurisdiction. [8]

This Court should grant the State's petition for a writ of certiorari and review the creation by the Supreme Court of North Carolina of an unfounded "federal law" restriction on state authority. *Cf. Oregon v. Hass*, 420 U.S. 714, 719 (1975) (state court may not impose restrictions on state authority "as a matter of federal constitutional law when this Court specifically refrains from imposing them") (emphasis omitted).

---

7 The Supreme Court may of course "look to the federal courts for guidance," *Smith*, 328 N.C. at 167-68, 400 S.E.2d at 409, in resolving a question of federal statutory construction. *See Tafflin v. Levitt*, 493 U.S. 455, ___, 110 S. Ct. 792, 798 (1990) (federal law decisions of state courts, while guided by federal court interpretations of federal statutes, are reviewable only by United States Supreme Court). It is plain from the decision below, however, that the Supreme Court of North Carolina treated *Vancier as controlling*: the Supreme Court's opinion contains no independent consideration of the effect of a section 5032 certification, but simply cites *Vancier* as a binding interpretation of federal law. *Smith*, 328 N. C. at 167-68, 400 S.E.2d at 409. However, only the decisions of this Court constitute interpretations of federal law that are binding on the highest court of a state. *See Asarco, Inc. v. Kadish*, 490 U.S. 605, 617 (1989) (state courts have power to issue "binding" decisions "that rest on their own interpretations of federal law").

8 *Vancier* is not, in fact, even persuasive authority supporting the holding of the Supreme Court in the present case. *Vancier* addressed the question of whether the United States District Court could reevaluate the United States Attorney's certification in determining whether it had jurisdiction over a juvenile proceeding. *Vancier's* holding that a federal district court cannot do so, even assuming it is correct, does not address the question presented here of concurrent state court jurisdiction.

CONCLUSION

For the foregoing reasons, the State of North Carolina respectfully prays and requests that a writ of certiorari issue to review the decision of the Supreme Court of North Carolina in this case.

Respectfully submitted,

LACY H. THORNBURG
Attorney General

Robert J. Blum
Special Deputy Attorney General
Counsel of Record

G. Lawrence Reeves, Jr.
Assistant Attorney General

H. Jefferson Powell
Special Counsel to the Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Telephone: 919/733-6012

No.

IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM 1990

STATE OF NORTH CAROLINA,

Petitioner

v.

CARLTON J. SMITH,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

APPENDIX

LACY H. THORNBURG
Attorney General

Robert J. Blum
Special Deputy Attorney General
Counsel of Record

G. Lawrence Reeves
Assistant Attorney General

H. Jefferson Powell
Special Counsel to the Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629
Telephone: 919-733-6012

Attorneys for Petitioner

TABLE OF CONTENTS
APPENDICES

Page

Opinion of the Supreme Court of North Carolina, State v. Smith, 328 N.C. 161, 400 S.E.2d 405 (1991) A-1

Order of U.S. District Court Filed 28 July 1986 Granting Motion to Transfer for Trial as Adult A-20

Order of U.S. District Court Filed 6 July 1987 Dismissing Juvenile Information A-21

Order of U.S. District Court Filed 3 December 1987 Denying Defendant's Motion to Dismiss A-22

Order of U.S. District Court Filed 14 December 1988 Dismissing Murder Charges A-23

Order of U.S. District Court Filed 12 January 1989 Dismissing Count Four (Escape Charge) A-24

Order of James M. Strickland, Presiding Superior Court Judge, Filed 23 February 1989 Denying Motion to Dismiss A-25

Order of the Supreme Court of North Carolina Denying Motion for Stay of Mandate, Entered 20 February 1991 ..... A-32

Order of William H. Rehnquist, Circuit Justice, Supreme Court of the United States, Denying Application for Stay of Mandate, Entered 5 March 1991 ..... A-33

Order of Supreme Court of North Carolina
Denying Motion for Reconsideration of Order,
Entered 13 March 1991 ..... A-34

Letter of Secretary of the Navy Forrestal
Dated 4 June 1941 ..... A-36

Stipulation of Counsel Regarding Area C
of Marine Corps Base, Camp Lejeune A-39

Letter of Assistant District Attorney Stroud
Dated 24 August 1981 ..... A-40

Juvenile Information with Appended
Certification of Assistant U.S. Attorney
Filed 8 July 1986 ..... A-41

Defendant's Motion to Dismiss
Filed 13 February 1989 Alleging Lack of
Jurisdiction of State of North Carolina A-44

41 Op. N.C. Att'y Gen. 580 (1971) A-45

IN THE SUPREME COURT NORTH CAROLINA

State of North Carolina	)	
	)	
v.	)	No. 130PA89 - Onslow
	)	
Carlton J. Smith	)	

On writ of certiorari to review an order entered by Strickland, J., at the 23 February 1989 Session of Superior Court, Onslow County. Heard in the Supreme Court 15 March 1990.

The defendant has been indicted on three charges of murder in the Superior Court, Onslow County. On 24 August 1981, when the defendant was fifteen years of age, the bodies of Connie Smith, Sharon Lee Sager, and Tyler Dash were found on the Marine Corps Base, Camp Lejeune, North Carolina. The area in which the bodies were found was purchased by the United States in 1941. In a letter to J. Melville Broughton, the Governor of North Carolina, dated 4 June 1941, Acting Secretary of the Navy James Forrestal notified the Governor that an Act of Congress required that in any case in which a State cedes jurisdiction over lands within its borders to the United States the head of any department having custody of such lands, shall, if such jurisdiction be accepted, file a notice of such acceptance with the Governor of such state ceding such jurisdiction. Acting Secretary Forrestal notified Governor Broughton that jurisdiction was accepted over the land effective at 12:00 noon on 9 June 1941 "in the manner and form provided by an act of 1907, Ch. 25, N.C. Code 1927, Sec. 8059." This is now N.C.G.S. § 104-7. On 24 August 1981 an assistant district attorney of the Fourth Prosecutorial District wrote to an assistant United States Attorney that, "[i]t has always been my understanding that criminal offenses occurring on the Marine Corps installations in Onslow Coun-

ty fall exclusively within the federal jurisdiction. Even assuming concurrent jurisdiction exists, we will defer to cognizant federal authorities in this case."

On 8 July 1986 the federal government filed a juvenile information against the defendant, charging him with three counts of first degree murder. The information alleged that the murders were committed in violation of 18 U.S.C. § 1111 (1982) on the Marine Corps Base, Camp Lejeune, North Carolina under the exclusive jurisdiction of the United States. On the same day the United States Attorney certified to Chief Judge W. Earl Britt, United States District Court for the Eastern District of North Carolina, that pursuant to 18 U.S.C. § 5032 (1982) on the authority delegated to him by the Attorney General of the United States "no juvenile court or other appropriate court of any state, including the General Court of Justice of the State of North Carolina, has jurisdiction over said juvenile with respect to acts of juvenile delinquency alleged in this case, such acts having occurred on Marine Corps Base, Camp Lejeune, North Carolina, a military reservation acquired for the use of the United States and under exclusive jurisdiction thereof."

On 28 July 1986 the government's motion to transfer the defendant to United States District Court for trial as an adult was allowed. On appeal to the Fourth Circuit Court of Appeals this order was reversed. At the time the three persons were killed on the Camp Lejeune reservation a fifteen year old person who was convicted of first degree murder could be committed to a relatively short period of confinement or treatment. In 1984 the federal Juvenile Delinquency Act was amended to provide that a fifteen year old charged with murder could be tried as an adult and sentenced to life imprisonment or possibly death. The Fourth Circuit Court of Appeals held that it would violate the ex post facto clause of article I, section 9 of the United States Constitution to try the defendant under an act which was not in effect at the

time the alleged crimes were committed and which would enhance the sentence which the defendant could receive. United States v. Juvenile Male, 819 F.2d 468 (4th Cir. 1987).

The United States Attorney then sought and was granted leave to dismiss the information. A federal grand jury then indicted the defendant on three counts of first degree murder. The district court denied a motion to dismiss the indictment and this order was reversed on appeal. The United States Court of Appeals for the Fourth Circuit held that once the government proceeded against a person under the Juvenile Delinquency Act it could not proceed against him under another act. United States v. Smith, 851 F.2d 706 (4th Cir. 1988). The indictment against the defendant was dismissed.

On 13 December 1988, the Onslow County grand jury indicted the defendant for the murders of the three persons whose bodies had been found on 24 August 1981. The superior court denied a motion to dismiss the indictments and we granted the defendant's petition for certiorari.

LACY H. THORNBURG, Attorney General, by ROBERT J. BLUM, Associate Attorney General, and G. LAWRENCE REEVES, JR., Assistant Attorney General, for the State.

CHARLES H. HENRY, JR. and RICHARD L. CANNON, III, for the defendant appellant.

WEBB, Justice.

This case brings to the Court the question of whether the Superior Court, Onslow County has jurisdiction to try a person as an adult for crimes he allegedly committed as a juvenile on the

Camp Lejeune military reservation. There are constitutional and statutory provisions that affect this question. Article I, § 8 of the Constitution of the United States provides in part:

> The congress shall have power....
>
> ....
>
> [17.] To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings[.]

N.C.G.S. § 104-7 provides in part:

> The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State required for the sites for customhouses, courthouses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government.
>
> Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this

> State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. The jurisdiction ceded shall not vest until the United States shall have acquired title to said lands by purchase, condemnation, or otherwise.

40 U.S.C. § 255 provides in part:

> Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.

In interpreting article I, § 8 of the Constitution of the United States and the statutory provisions, it has been held that if several steps are taken the federal government acquires jurisdiction over lands it owns. The government must acquire the land

by condemnation or otherwise. If the state in which the land is situated cedes jurisdiction to the federal government, and if the government accepts jurisdiction, the state no longer has jurisdiction over this territory. Paul v. United States, 371 U.S. 245, 9 L.Ed.2d 292 (1963). Whether the United States has acquired jurisdiction is a federal question. Silas Mason Co. v. Tax Com., 302 U.S. 186, 82 L.Ed. 187 (1937).

In this case all parties agree that the murders allegedly occurred on the Camp Lejeune military reservation and that the State has ceded and the federal government has accepted jurisdiction over this territory. The State contends the government's jurisdiction is not exclusive and the State has jurisdiction to try the defendant.

In criminal cases dealing with this problem the federal courts have said the jurisdiction of the United States is exclusive. In United States v. Unzeuta, 281 U.S. 138, 74 L.Ed. 761 (1930), the defendant assigned error for being tried in federal court for a murder committed on the Fort Robinson military reservation in Nebraska. In overruling this assignment of error the United States Supreme Court said, "[w]hen the United States acquires title to lands, which are purchased by the consent of the legislature of the state which which they are situated 'for the Erection of Forts, Magazines, Arsenals, Dock-yards and other needful Buildings' (Const. art. I, § 8) the Federal jurisdiction is exclusive of all state authority." ***Id.*** at 285, 74 L.Ed. at 773. In Bowen v. Johnston, 306 U.S. 19, 83 L.Ed. 455 (1939), the defendant was convicted of a murder committed in the Chickamauga and Chattanooga National Park. The United States Supreme Court said the federal district court had exclusive jurisdiction to try the defendant for crimes committed in this territory. ***See also*** Benson v. United States, 146 U.S. 325, 36 L.Ed. 991 (1892).

In United States v. Daye, 696 F.2d 1305 (11th Cir. 1983), the Court of Appeals for the Eleventh Circuit, in overruling the defendant's assignment of error to his being tried in federal court said, "because the Everglades National Park remains in the exclusive jurisdiction of the federal government, Florida has not and cannot extend its jurisdiction to cover Indian lands located within the Park." In State v. DeBerry, 224 N.C. 834, 32 S.E.2d 617 (1945) this Court, relying on federal cases, held it was error not to abate a criminal action for assault on a female which occurred on the premises of a post office. We said that at the time the United States acquired the land for the post office, "the Legislature had given its unqualified consent to the acquisition of lands within the State by the United States for the purpose of erecting thereon any post office, courthouse, etc., and the Federal jurisdiction therefore became exclusive." ***Id.*** at 837, 32 S.E.2d at 619. It appears from these cases that the Superior Court, Onslow County does not have jurisdiction to try the defendant.

The State argues that the federal government has not exercised exclusive jurisdiction over juvenile delinquency offenses which occur on the Camp Lejeune military reservation. It bases this argument on Paul v. United States, 371 U.S. 245, 9 L.Ed.2d 292; Howard v. Commissioners of Sinking Fund of City of Louisville et al., 344 U.S. 624, 97 L.Ed. 617 (1953); Stewart v. Sadrakula, 309 U.S. 94, 84 L.Ed. 596 (1940); and Chicago R.I. & P. Ry. Co. v. McGlinn, 114 U.S. 542, 29 L.Ed. 270 (1885). These decisions have developed the doctrine that in civil cases the state laws in existence on federal enclaves at the time of the cession of the territory continue in effect until abrogated by the federal authority. This assures that no area, however small, will be left without a developed legal system for private rights. The State argues that the areas of interest to both sovereigns may co-exist within the enclave so long as there is no interference with the federal function.

The State argues that the federal government has not abrogated State jurisdiction over juvenile offenders on the Camp Lejeune military reservation and the State has concurrent jurisdiction. It relies on 18 U.S.C. § 5032 which says in part:

> A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles....
>
> If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

The State contends that this statute and other legislative action show it was and is the position of Congress that states are better able to deal with the juvenile delinquency problems than federal authorities. The State concedes that it normally would not have jurisdiction over criminal matters but says in this case that a juvenile delinquency hearing is a civil matter. Once the state court obtained jurisdiction it did not lose it when the defendant became an adult. The State contends it has concurrent jurisdiction because the federal government has never accepted

jurisdiction over juvenile matters on the Camp Lejeune reservation. It argues that 40 U.S.C. § 255 allows the federal government only the jurisdiction it requires.

The difficulty for the State in relying on 18 U.S.C. § 5032 to argue that the federal government recognizes that states are better able to deal with juvenile delinquency problems than the federal government is that the United States Attorney certified to the United States District Court pursuant to 18 U.S.C. § 5032 that the courts of North Carolina did not have jurisdiction over the defendant with respect to the acts committed on the Camp Lejeune military reservation. In United States v. Vancier, 515 F.2d 1378 (2nd Cir.), ***cert. denied***, 423 U.S. 857 (1975), a juvenile was charged in the United States District Court for the Southern District of New York with an act of juvenile delinquency. He was also charged with a criminal act in a court in the State of New York. The United States Attorney certified to the federal district court that a juvenile or other appropriate court did not have jurisdiction over the defendant with respect to the alleged acts of juvenile delinquency. The state court dismissed the charges and the defendant was held in federal court to be a juvenile delinquent. On appeal he contended he should not have been tried in federal court because the state court had jurisdiction. The Second Circuit Court of Appeals held that the United States Attorney's certification, in the absence of a showing of bad faith, had to be accepted by the Court as final. It held the federal district court had exclusive jurisdiction. Because we are dealing with a federal question we must look to the federal courts for guidance. If we must accept the United States Attorney's certification as final that the courts of this state do not have jurisdiction, then 18 U.S.C. § 5032 is not helpful to the State.

As to the State's argument that the federal government never accepted jurisdiction of juvenile delinquency matters on the Camp Lejeune reservation, the acceptance of Acting

Secretary of the Navy Forrestal said that jurisdiction was "accepted on behalf of the United States in the manner and form provided by an act of 1907, Ch. 25, N.C. Code 1927, Sec. 8059" (N.C.G.S. § 104-7). N.C.G.S. § 104-7 says, "[e]xclusive jurisdiction ... shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State." It appears that the State ceded all jurisdiction that it could except for the service of process and this is what the United States accepted.

The State says that Acting Secretary Forrestal could not have accepted jurisdiction of persons charged with acts of juvenile delinquency because he did not know "the many complexities of jurisdictional law that would arise in the future." Whatever the Acting Secretary could foresee, we believe he accepted exclusive jurisdiction as completely as he could. The state and federal governments had laws in effect governing matters of juvenile delinquency at the time jurisdiction was ceded. There is nothing in either of the two opinions of the Court of Appeals for the Fourth Circuit dealing with this defendant that would indicate the district court did not have jurisdiction to conduct an adjudication of delinquency for this defendant.

As to the State's contention that a juvenile delinquency hearing is a civil matter in both federal and state courts and for that reason the state and federal governments have concurrent jurisdiction, it is true that in Kent v. United States, 383 U.S. 541, 16 L.Ed.2d 84 (1966), the United States Supreme Court said juvenile delinquency proceedings are designated civil and not criminal. Subchapter XI of Chapter 7A of the General Statutes, which contains the North Carolina Juvenile Code, does not classify a juvenile hearing as civil or criminal. We cannot find a case in this state which says a juvenile proceeding is a civil case. In regard to juvenile proceedings this Court has held that "[w]hatever may be their proper classification, they certainly are

not 'criminal prosecutions'" which require a jury trial or a trial at which the public must be admitted. In re Burrus, 275 N.C. 517, 529, 169 S.E.2d 879, 886 (1969). There are certain constitutional rights which a juvenile has at such a hearing which are not required in civil trials, such as the right to counsel if there is a possibility of commitment and the privilege against self incrimination. This would suggest a juvenile hearing is not a civil case. We do not believe we have to decide whether a juvenile hearing is civil or criminal. In this case the proceedings against the defendant in the Superior Court, Onslow County are criminal proceedings. His case was transferred to superior court for trial on three charges of murder.

Bound as we are by the federal court's interpretation of this federal question, we must hold that the Superior Court, Onslow County does not have jurisdiction to try the defendant. If we were to hold otherwise we would have to overrule State v. DeBerry, 224 N.C. 834, 32 S.E.2d 617. As Chief Justice Stacy said in ***DeBerry***, "[t]his may lead to an undesirable result. Nevertheless, we can only declare the law as we find it." ***Id.*** at 837, 32 S.E.2d at 619.

We reverse the order of the superior court and remand for the dismissal of the three charges against the defendant.

REVERSED AND REMANDED.

NO. 130PA89 - State v. Smith

MARTIN, J., concurring

I concur in the result reached by the majority but for different reasons.

A review of the history of this appeal is helpful to an understanding of the issues involved.

1. On 24 August 1981 Connie Smith, Tyler Todd, and Sharon Sager were found murdered in a residence located at 6080-A Kentucky Court in the Watkins Village housing area of the Camp Lejeune Marine Corps base. The victims were the defendant's aunt, his twelve year old sister, and his cousin.

2. On 24 August 1981 this defendant was fifteen years of age and resided with his mother and two sisters on the Marine Corps base at Camp Lejeune.

3. The defendant was immediately a suspect in the case. However, federal authorities evidently concluded that they did not have sufficient evidence to proceed, and by 1983 they had lost track of this defendant altogether.

4. Sometime after the murders, defendant Smith moved with the remainder of his family to Oregon.

5. In 1986 defendant wanted to join the Oregon National Guard. That organization contacted Camp Lejeune for copies of defendant's medical records. Upon receipt of the records which included psychiatric reports, defendant was turned down for the National Guard. Defendant's mother contacted Camp Lejeune and asked that the inves-

tigation concerning defendant be closed so that he could "get on with his life." Agents from the Naval Investigative Service contacted defendant and conducted a number of interviews with him. At one of those interviews, defendant made incriminating statements concerning the murders and was arrested on 30 June 1986.

6. On 7 July 1986 Samuel T. Currin, United States Attorney, through his assistant, M.F. Bogdanos, filed a certificate with the Federal Court for the Eastern District of North Carolina certifying "no Juvenile Court or other appropriate court of any state including the General Court of Justice of the State of North Carolina has jurisdiction over said juvenile with respect to the acts of juvenile delinquency alleged in this case, such acts having occurred on Marine Corps base at Camp Lejeune, North Carolina, a military reservation acquired for the use of the United States and under exclusive jurisdiction thereof."

7. On 8 July 1986 the federal government filed a "juvenile information" charging defendant with these three murders, and a magistrate found probable cause to believe that "the juvenile committed the offenses alleged."

8. On 22 July 1986 the U.S. District Judge entered an order upon motion of the government transferring this case to the District Court for trial of the defendant as an adult. This order was appealed to the United States Court of Appeals, Fourth Circuit.

9. On 26 May 1987 the United States Court of Appeals, Fourth Circuit, entered a decision reversing the order of the trial court transferring this defendant's case for trial as an adult. The court held that at the time of the com-

mission of these alleged crimes (24 August 1981) there was no provision in the Federal Juvenile Delinquency Act which would permit the transfer of a juvenile's case to the District Court for trial as an adult. Although the statute in effect in 1981 was amended in 1984 to allow such transfer, the amendment could not be applied to this defendant for these alleged crimes as that would constitute a violation of the ***ex post facto*** clause of the United States Constitution. United States v. Juvenile Male, 819 F.2d 468 (4th Cir. 1987).

10. On 6 July 1987 the United States District Judge entered an order granting leave to the government to dismiss the juvenile information, and this dismissal was taken by the government.

11. On 7 July 1987 the United States government procured a true bill of indictment from the grand jury charging this defendant with three counts of murder in the first degree involving these alleged killings and a fourth count of escape.

12. On 8 July 1987 the defendant made a motion to dismiss the bills of indictment which was denied by the Federal Court on 3 December 1987. Notice of Appeal was taken to the United States Court of Appeals, Fourth Circuit.

13. The Court of Appeals on 12 July 1988 reversed the District Court Judge ordering that the three murder charges should have been dismissed.

14. On 14 December 1988 the United States District Judge entered an order pursuant to the Fourth Circuit opinion dismissing the three murder charges against this

defendant. The theory of the Fourth Circuit decision was that the initiation of the juvenile proceedings against this defendant, which the government had previously dismissed, prevented the government from later prosecuting him as an adult by way of a bill of indictment.

15. Thereafter, on 12 January 1989 the government dismissed the escape charge with the consent of the Federal Court.

16. On 13 December 1988 the Onslow County grand jury returned indictments charging defendant with the 24 August 1981 murders of his aunt, cousin, and sister.

17. Defendant entered pleas of not guilty at his arraignment on 25 January 1989.

18. On 13 February 1989 defendant filed two motions to dismiss for lack of jurisdiction.

19. On 23 February 1989 Judge Strickland denied these motions. Whereupon the case was appealed to this Court.

At the outset, the validity of State v. DeBerry, 224 N.C. 834, 32 S.E.2d 617 (1945), is not necessary to a resolution of this appeal. This Court in ***DeBerry*** only held that N.C.G.S. § 104-1 and 104-7 did not apply to property acquired by the United States in 1899, years before the statutes were adopted. The case at bar is not concerned with the retroactivity of the statutes. The "unqualified consent" by the state to the federal acquisition of the post office property in ***DeBerry*** was based upon legislation adopted in 1887, not N.C.G.S. § 104-7. ***DeBerry*** is not relevant to the issue before the Court at this time.

The legal issue involved in this case is not the guilt or innocence of the defendant of the murders in question. The defendant has made a judicial stipulation that on 24 August 1981 the three victims were found murdered in a residence on the Marine Corps base at Camp Lejeune. The only question remaining as to guilt or innocence is whether this defendant was the perpetrator of the three murders, or any one or more of them. Defendant has made incriminating statements to Naval Investigative Service agents from which a jury could conclude that defendant was the person who perpetrated the crimes.

The issue before this Court is whether the Superior Court of Onslow County had jurisdiction to try this defendant upon the bills of indictment returned against him for the murders. The resolution of this issue depends upon this Court's interpretation of the United States Constitution, state and federal statutes, and the acts of the state and federal governments with respect to the acquisition of the land by the United States government upon which Camp Lejeune is now situated and within which the murders in this case occurred.

At the time of the murders in question there was no provision in the Federal Juvenile Delinquency Act for the trial of a juvenile as an adult when charged with such serious offenses as murder. The most that the federal government could do under the Federal Juvenile Delinquency Act at that time was to have a juvenile delinquency adjudication proceeding.

The United States government in 1981, at the time of these crimes, had no provision to try as an adult a juvenile who had committed three murders. Under the law of North Carolina in 1981, the defendant could be tried as an adult for the offense of murder. Where there is a gap in jurisdiction of the United States, upon the ceding of territorial jurisdiction by the state to the United States, the state retains its underlying territorial juris-

diction over the area in question insofar as the exercise of such jurisdiction by the state does not interfere with the activities of the federal government in carrying out its duties upon the federal enclave. However, the Federal Assimilative Crimes Act cures this gap in the federal jurisdiction. This act reads:

> **Laws of States adopted for areas within Federal jurisdiction**
>
> Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title [18 USC § 7], is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

18 U.S.C. § 13 (1948).

The provisions of this Act have been in effect since 1825. The purpose of this statute is to provide for punishment in the federal courts, as an offense against the United States, of offenses committed within federal enclaves, but only in the way and to the extent that the offense in question would have been punishable if committed within the jurisdiction of the state. United States v. Press Publishing Co., 219 U.S. 1, 55 L.Ed. 65 (1910). It provides criminal laws for federal enclaves by use of the state to fill gaps in federal criminal law. United States v. Brown, 608 F.2d 551 (5th Cir. 1979). Where Congress has failed to pass specific criminal legislation, the Act is used to fill the gaps in criminal law in federal enclaves. United States v. Fulkerson, 631 F.Supp. 319 (D. Haw. 1986).

In 1981, the federal law failed to provide for the trial of a juvenile for the crime of murder committed within a federal enclave. The juvenile could only be proceeded against under the Federal Juvenile Delinquency Act. Such proceedings are civil rather than criminal. Kent v. United States, 383 U.S. 541, 16 L.Ed.2d 84 (1966). The juvenile court basically is determining the needs of the child and society rather than adjudicating criminal conduct or fixing criminal responsibility, guilt, or punishment. ***Id.*** Thus in 1981, the federal laws failed to provide for the trial of this defendant, a juvenile, on criminal charges of murder.

To the contrary, North Carolina in 1981 did provide for the trial of a juvenile for the crime of murder. The statute, passed in 1979, reads:

> The court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile 14 years of age or older to superior court if the juvenile was 14 years of age or older at the time he allegedly committed an offense which would be a felony if committed by an adult. If the alleged felony constitutes a capital offense and the judge finds probable cause, the judge shall transfer the case to the superior court for trial as in the case of adults.

N.C.G.S. § 7A-608 (1989).

Therefore, by applying the Federal Assimilative Crimes Act, thereby incorporating N.C.G.S. § 7A-608 as a part of the federal criminal law, the United States had jurisdiction to try this defendant for the capital charges of murder. Because the federal government thereby had jurisdiction to try this defendant on the murder charges, the state lacked jurisdiction to do so.

Inexplicably, counsel and the court failed to recognize and apply the Federal Assimilative Crimes Act in deciding and reviewing the issue of whether this defendant could be tried as an adult in the federal court for these three murders. ***See*** United States v. Juvenile Male, 819 F.2d 468 (4th Cir. 1987). Had the federal court done so, these murder cases could have been adjudicated in 1987. Nevertheless, the actions of the federal court cannot serve to expand the jurisdiction of the courts of this state.

For these reasons, I concur in the result.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION

No. 86-31-01-CR-4

UNITED STATES OF AMERICA,	)	
	)	
	)	
v.	)	**ORDER**
	)	
A JUVENILE MALE.	)	

The court hereby GRANTS the government's July 18, 1986, motion to transfer the juvenile defendant to district court for trial as an adult. Inasmuch as the defendant has indicated his intent to seek an immediate appeal to the Fourth Circuit from this ruling, all matters pertaining to this case shall remain under seal and the defendant shall be treated as if a juvenile pending appellate review. A failure to do so would irreparably damage the defendant should this court's ruling be reversed on appeal. A more detailed order delineating the rationale underlying the court's decision herein shall issue as soon as possible.

SO ORDERED.

This 28th day of July, 1986.

/s/ James C. Fox
JAMES C. FOX
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 86-31-01-CR-4

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	**ORDER**
A JUVENILE MALE, Defendant.	)	

This matter is before the court on motion by the Government to dismiss the Juvenile Information, No. 86-31-01-CR-4, against the defendant in this action. The Government also has moved the court for an order providing that six (6) exhibits previously introduced be returned to the Government for use in subsequent proceedings.

Therefore, it is ORDERED that leave is granted for the Government to file a dismissal of Juvenile Information, No. 86-31-01-CR-4, pursuant to Rule 48(a); Fed. R. Crim. P. Further, the Government's motion for the return of its six (6) exhibits heretofore filed in this matter is ALLOWED, and the clerk of court is directed to return said exhibits as requested in the Government's June 22, 1987 motion.

SO ORDERED.

This 6th day of July, 1987.

/s/ James C. Fox
JAMES C. FOX
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION

No. 87-24-01-CR-4

UNITED STATES OF AMERICA	)	
	)	
v.	)	**ORDER**
	)	
CARLTON J. SMITH.	)	

This matter is before the court on motion by defendant to dismiss the indictment. For reasons which will be set forth more fully in a subsequent memorandum opinion, the motion is denied.

This 3 December 1987.

/s/ W. Earl Britt
W. EARL BRITT
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION

No. 87-24-01-CR-4

UNITED STATES OF AMERICA	)	
	)	
v.	)	**ORDER**
	)	
CARLTON J. SMITH.	)	

This matter is before the court on remand from the United States Court of Appeals for the Fourth Circuit. Pursuant to that remand Counts One, Two and Three of the indictment, charging the defendant with murder, are hereby dismissed. On the remaining charge, Count Four, appearance bond in the amount of One Hundred Dollars ($100) is hereby set.

This 14 December 1988.

/s/ W. Earl Britt
W. EARL BRITT
United States District Judge

UNITED STATES DISTRICT COURT
Eastern District of North Carolina
New Bern Division

United States of America	)	Criminal No. 87-24-01-CR-4
	)	
vs	)	
	)	
Carlton J. Smith	)	Filed: Jan. 12, 1989

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Eastern District of North Carolina hereby dismisses Count 4 of the Indictment against Carlton J. Smith, defendant, for the reason that post-indictment investigation and legal developments in the case have persuaded the Government that it is not in the public interest to proceed with this charge.

/s/ John Stuart Bruce
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal

/s/ W. Earl Britt
United States District Judge

STATE OF NORTH CAROLINA
SUPERIOR COURT DIVISION

State v. Carlton James Smith

[caption omitted]

O R D E R

This matter came on before the undersigned Judge presiding at the February 20, 1989 Criminal-Civil Session of Superior Court in Onslow County. At the request of the defendant, the Court conducted a hearing on two motions filed by the defendant, one motion being entitled "Motion to Dismiss for Lack of Jurisdiction," and the other being entitled "Motion to Dismiss for Lack of Jurisdiction in Superior Court." Both motions were dated February 13, 1989.

At this hearing the defendant was present and represented by his attorneys, Mr. Richard L. Cannon, III, and Mr. Charles H. Henry, Jr. The State of North Carolina was represented by District Attorney William H. Andrews and Assistant District Attorney Walter H. Paramore, III.

At this hearing, the State of North Carolina and the attorneys for the defendant stipulated to the following facts which the Court finds beyond a reasonable doubt:

1. That on August 24, 1981, Connie Smith, Tyler Todd Dash, and Sharon Sagler were found murdered in the residence located at 6080-A Kentucky Court in the Berkley Manor residential area of Camp Lejeune Marine Corps Base.

2. That on the same date, the defendant, Carlton James Smith, was fifteen years of age with a birthdate of March 20, 1966.

3. That the United States Marine Corps Base at Camp Lejeune is located entirely in Onslow County, North Carolina.

4. That all Federal charges against the defendant have been dismissed as of this date.

In addition to the foregoing findings of fact, the Court makes the following additional findings of fact beyond a reasonable doubt:

1. That on December 13, 1988, the Onslow County Grand Jury indicted this defendant on these charges.

2. That the property on which this crime allegedly occurred was acquired by condemnation by the United States in 1941 for the establishment of Camp Lejeune Marine Corps Base.

3. That in 1941, the United States accepted jurisdiction of the property now occupied by Camp Lejeune Marine Corps Base.

4. That there was no intent on the part of the United States to accept exclusive jurisdiction over acts of juvenile delinquency or juvenile delinquents on Camp Lejeune Marine Corps Base.

Exception No. 1

5. That there are now no Federal charges pending against this defendant.

6. That this prosecution of the defendant by the State of North Carolina would not interfere with any jurisdiction asserted by the Federal Government and would not interfere with any interest of the Federal Government.

Exception No. 2

7. That on August 24, 1981, Joseph E. Stroud, Jr., then an Assistant District Attorney in the Fourth Prosecutorial District wrote a letter to an Assistant United States Attorney for the Eastern District of North Carolina stating as follows: "It has always been my understanding that criminal offenses occurring on the Marine Corps installation in Onslow County fall exclusively within the Federal jurisdiction. Even assuming concurrent jurisdiction exists, we will defer to cognizant federal authorities in this case."

8. That on July 7, 1986, an Assistant United States Attorney for the Eastern District of North Carolina certified to the Federal District Court for the Eastern District of North Carolina as follows: "This is to certify that in the case of the ***United States of America vs. A Juvenile Male***, no juvenile court or other appropriate court of any state, including the General Court of Justice of the State of North Carolina, has jurisdiction over said juvenile with respect to the acts of juvenile delinquency alleged in this case, such acts having occurred on Marine Corps Base, Camp Lejeune, North Carolina, a military reservation acquired for the use of the United States and under exclusive jurisdiction thereof."

9. That the Federal murder charges arising out of this same incident were ordered dismissed by the United States Court of Appeals on July 12, 1988.

Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

1. That at the time the United States accepted jurisdiction over the property that now makes up Camp Lejeune Marine Corps Base, there was no intent on the part of the United States

to accept exclusive Federal jurisdiction over acts of juvenile delinquency or juvenile delinquents because the Federal juvenile statutes in effect both then and now and at all times since 1941 indicate a clear Federal preference for the referral of juvenile delinquent matters to State authorities. In view of the clear language of the Federal juvenile statutes, the United States could not have intended to accept exclusive Federal jurisdiction over juvenile delinquent matters at the time that it accepted jurisdiction over the property that now constitutes the Camp Lejeune Marine Corps Base.

Exception No. 3

2. That the United States Supreme Court in ***Howard vs. Commissioners of Louisville***, 344 U.S. 624 (1953) held that there is no barrier to the exercise of State jurisdiction over Federal property even when exclusive jurisdiction has been accepted by the United States and acknowledged by the Governor of that State so long as there is no interference with the jurisdiction asserted by the Federal Government.

3. That this prosecution of the defendant by the State of North Carolina would not interfere with any jurisdiction asserted by the Federal Government and would not interfere with any interest of the Federal Government.

Exception No. 4

4. That there is no Federal barrier to the exercise of jurisdiction by the State of North Carolina over juveniles who commit acts of delinquency on the Camp Lejeune Marine Corps Base.

Exception No. 5

5. That G.S. 104-7 provides for the ceding to the United States of exclusive jurisdiction over any lands acquired by the United States under the provisions of G.S. 104-7. However, 40 U.S.C. 255 provides that unless and until the United States has accepted jurisdiction over such lands, it is conclusively presumed that no such jurisdiction has been accepted. In this case, there being no intent on the part of the United States to accept exclusive Federal jurisdiction over juvenile delinquent matters on Camp Lejeune Marine Corps Base, the State of North Carolina retained jurisdiction over juvenile delinquent matters on Camp Lejeune Marine Corps Base under the authority enunciated by the North Carolina Supreme Court in the case of ***State v. Burell***, 256 N.C. 288 (1962).

Exception No. 6

6. That the letter from Assistant District Attorney Stroud deferring State prosecution to Federal authorities in 1981 did not bar the District Attorney forevermore from prosecuting this case. Furthermore, the opinion of Assistant District Attorney Stroud in 1981 that the Federal Government had exclusive jurisdiction over criminal offenses occurring at Camp Lejeune does not defeat jurisdiction on the part of the State of North Carolina any more so than a contrary opinion on his part would have conferred jurisdiction if none existed.

Exception No. 7

7. That the certification by a member of the United States Attorney's Office that the State of North Carolina had no jurisdiction does not deprive the State of North Carolina of jurisdic-

tion any more so than a contrary certification would have conferred jurisdiction upon the State of North Carolina if none existed.

Exception No. 8

8. That the procedural requirements set out in 18 U.S.C. 5032 and its predecessor 18 U.S.C. 922 are not binding on proceedings in the State Courts of North Carolina and are relevant in this matter only in so far as they shed light upon whether or not the United States in 1941 intended to accept exclusive jurisdiction over juvenile matters when it acquired the property on which the Camp Lejeune Marine Corps Base is now located.

Exception No. 9

9. That the State of North Carolina has jurisdiction so as to be able to prosecute these offenses and this defendant.

Exception No. 10.

10. That under the authority of ***In Re Stedman***, 305 N.C. 92 (1982), the District Court Division of the General Court of Justice of Onslow County has no further jurisdiction over this defendant in that he is now over twenty-two years of age.

11. That the Superior Court of Onslow County does have jurisdiction over these offenses and this defendant so as to be able to place him on trial for the offenses for which he has been indicted by the Onslow County Grand Jury.

Exception No. 11

Therefore, it is ORDERED that the defendant's "Motion to Dismiss for Lack of Jurisdiction in Superior Court" and "Motion to Dismiss for Lack of Jurisdiction" be and same are hereby denied.

This 23rd day of February, 1989.

/s/ James M. Strickland
PRESIDING SUPERIOR COURT
JUDGE

SUPREME COURT OF NORTH CAROLINA
J. Gregory Wallace, Clerk
Area Code 919 733-3723 P.O. Box 2170
Raleigh, North Carolina 27602

21 February 1991

Mr. Robert J. Blum
Associate Attorney General

Re: STATE v CARLTON J. SMITH
No. 130PA89

Dear Mr. Blum:

Motion by Attorney General for Stay of Mandate has been filed and the following order entered:

"Allowed as follows: the issuance of the mandate of this Court is stayed until 15 March 1991, on which date this stay shall automatically expire and the mandate shall issue. By order of the Court in conference this the 20th day of February 1991.

s/ Whichard, J.
For the Court:

Very truly yours,

/s/Peggy N. Byrd
PEGGY N. BYRD
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

William K. Suter
Clerk of the Court

March 5, 1991

Mr. Robert J. Blum
Special Deputy Atty. General
P.O. Box 629
Raleigh, NC 27602-0629

Re: North Carolina,
v. Carlton J. Smith
Application No. A-643

Dear Mr. Blum:

The application for a stay of mandate of Supreme Court of North Carolina pending filing and disposition of petition for writ of certiorari in the above-entitled case has been presented to the Chief Justice, who on March 5, 1991 endorsed thereon the following:

"3/5/91
Denied
WHR"

Very truly yours,

WILLIAM K. SUTER, Clerk

By /s/Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

No. 130PA89 FOUR-B DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

STATE OF NORTH CAROLINA	)	
	)	
v	)	**From Onslow**
	)	
CARLTON J. SMITH	)	

****

ORDER

Upon consideration of the motion filed by Attorney General, for reconsideration of the order dated 20 February 1991 in this matter, the following order was entered:

> "Denied by order of the Court in conference, this the 13th day of March 1991.
>
> s/Webb, J.
> For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 13th day of March 1991.

J. GREGORY WALLACE
Clerk of the Supreme Court

/s/Peggy N. Byrd
Assistant Clerk

AREA C

DEPARTMENT OF THE NAVY
WASHINGTON

JUN 4 1941

Sir:

An Act of Congress approved October 9, 1940 (54 Stat., 1033), provides that in any case where a state cedes jurisdiction over lands within its borders to the United States, the head or authorized officer of any department or independent establishment or agency of the Government having custody of such lands, shall, if such jurisdiction be accepted on behalf of the United States, file a notice of such acceptance with the Governor of the State ceding such jurisdiction.

Pursuant to the provisions of the aforesaid act, jurisdiction is hereby accepted on behalf of the United States in the manner and form provided by an Act of 1907, Ch. 25, H. C. Code 1927, Sec. 8059, over certain lands in Onslow County, North Carolina, to wit:

> Beginning at a point in the center line of North Carolina Highway No. 24, said point being at the normal high water line on the eastern shore of North East Creek, and running S. 46° 60' E. 2,888.3 feet along the center line of said highway to the beginning of a 1° curve; thence continuing along the center line of said highway to the left on said curve 2,791.6 feet to the end of said curve; thence continuing along the center line of said highway S. 74° 11'E. 1,516.00 feet to the property line between Minie Bagott and P. L. Wynn; thence S. 1° W. 2,018.00 feet along the property line between those two properties to the north line of the property of Grover Davis; thence N. 85° 30'

E. 2,697.00 feet along the north line of said property to Mirey Branch; thence southerly with the various courses of Mirey Branch to the mouth of Cowbone Branch; thence eastwardly with the various courses of Cowbone Branch to a ditch; thence S. 24° 50' E. 376.00 feet to a point; thence S. 50° 25' E. 1100.00 feet to a point; thence S. 2° 50' E. 333.00 feet to Deep Bottom Branch; thence southwesterly with the various courses of Deep Bottom Branch to a corner; thence N. 62° 30' W. 1180.00 feet to a point; thence S. 75° W. 240.00 feet to a point on Mirey Branch; thence southerly with the various courses of Mirey Branch to Wallace Creek; thence southeasterly with the various courses of Wallace Creek to a corner; thence S. 16° 35' W. 1290.00 feet to a point; thence S. 42° 35' W. 860.00 feet to a point; thence N. 64° 30' W. 656.00 feet to a point in the center of Bear Creek Road; thence S. 78° 30' W. 2206.00 feet to a point in the center of Old Sneads Ferry Road; thence with said road northwesterly to Bear Creek Road; thence with said Bear Creek Road to Sneads Ferry Road; thence to the Sneads Ferry Road northwardly to a corner of Grover Davis' property; thence N. 41° 45' W. 742.00 feet to Wallace's Creek; thence southwesterly with the various courses of Wallace's Creek to the mouth of said creek; thence northerly, westerly, northerly and easterly along the normal high water line of the eastern shore of New River to the mouth of North East Creek; thence easterly and northerly along the normal high water line of North East Creek to the point of beginning, save and except a strip of land 30 feet in width lying on the southerly side of the center line of North Carolina Highway No. 24, containing 6,226.345 acres, more or less.

These lands were acquired for the establishment of a Marine Corps Training Area in Onslow County, North Carolina, pursuant to the provisions contained in the Act of Congress approved April 5, 1941 (Public No. 29, 77th Congress).

Jurisdiction over the above described lands is accepted on behalf of the United States effective at 12:00 o'clock noon on the 9th day of June, 1941.

There is enclosed a carbon copy of this letter of acceptance. Its return in the enclosed franked envelope with your endorsement thereon of the time of the receipt of this acceptance will be appreciated.

Respectfully,

JAMES FORRESTAL
Acting Secretary of the Navy

Original of this letter received
and filed on the 10 day of June 1941

His Excellency
The Governor of North Carolina
Raleigh, North Carolina

J. MELVILLE BROUGHTON
Governor

cc - Attorney General

STIPULATION

The undersigned counsel stipulate to the following facts:

1. On August 24, 1981, Connie Smith, Tyler Todd, and Sharon Sagler were found murdered in the residence located at 6080-A Kentucky Court in the Watkins Village housing area of Marine Corps Base Camp Lejeune.

2. The Watkins Village housing area is located within Area C (as described on pages 24 through 28 of this record) of Marine Corps Base Camp Lejeune.

/s/ Robert J. Blum
Robert J. Blum
Associate Attorney General
N.C. Department of Justice

/s/ Charles H. Henry, Jr.
Charles H. Henry, Jr.
Attorney for
Defendant/Petitioner

/s/ G. Lawrence Reeves, Jr.
G. Lawrence Reeves, Jr.
Assistant Attorney General
N.C. Department of Justice

/s/ Richard L. Cannon, III
Richard L. Cannon, III
Attorney for
Defendant/Petitioner

GENERAL COURT OF JUSTICE
OFFICE OF THE DISTRICT ATTORNEY
FOURTH PROSECUTORIAL DISTRICT
P.O. Box 1282
Jacksonville, North Carolina 28540

William H. Andrews
District Attorney

August 24, 1981

The Honorable Wallace W. Dixon
Assistant United States Attorney
P.O. Box 26897
Raleigh, North Carolina 27611

Re: Homicide case on Marine Corps Base, Camp LeJeune, North Carolina

Dear Mr. Dixon:

Per our telephone conversation of this afternoon, I understand that your office is investigating a triple homicide aboard Marine Corps Base, Camp LeJeune, North Carolina, and you wish to know our office's position regarding federal or state jurisdiction. You related to me that the bodies of the victims were found on the military reservation and that one victim was a military dependent, while the other two were houseguests of the first. You also told me that you have a fifteen year old suspect who is a military dependent.

It has always been my understanding that criminal offenses occurring on the Marine Corps installations in Onslow County fall exclusively within the federal jurisdiction. Even assuming concurrent jurisdiction exists, we will defer to cognizant federal authorities in this case.

Very truly yours,

/S/ Joseph E. Stroud, Jr.
JOSEPH E. STROUD, JR.
ASSISTANT DISTRICT ATTORNEY

JES Jr./res

FILED IN OPEN COURT
ON JULY 8, 1986
J. Rich Leonard, Clerk
U.S. District Court
Eastern District of N.C.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA
NEW BERN DIVISION**

NO. 86-31-01-CR-4

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**JUVENILE**
	)	**INFORMATION**
A JUVENILE MALE,	)	
Defendant.	)	

The United States Attorney Charges:

First Count

That on or about the 24th day of August 1981, at Marine Corps Base, Camp Lejeune, North Carolina, in the Eastern District of North Carolina, on lands acquired for the use of the United States and under the exclusive jurisdiction thereof, a JUVENILE MALE did, with premeditation and malice aforethought and by means of slashing her throat with a knife, murder Sharon Lee Sager, in violation of the provisions of Title 18, United States Code, Section 1111.

Second Count

That on or about the 24th day of August 1981, at Marine Corps Base, Camp Lejeune, North Carolina, in the Eastern District of North Carolina, on lands acquired for the use of the United States and under the exclusive jurisdiction thereof, a JUVENILE

MALE did, with premeditation and malice aforethought and by means of slashing his throat with a knife, murder Tyler Todd Dash, in violation of the provisions of Title 18, United States Code, Section 1111.

Third Count

That on or about the 24th day of August 1981, at Marine Corps Base, Camp Lejeune, North Carolina, in the Eastern District of North Carolina, on lands acquired for the use of the United States and under the exclusive jurisdiction thereof, a JUVENILE MALE did, with premeditation and malice aforethought and by means of slashing her throat with a knife, murder Connie Denise Smith, in violation of the provisions of Title 18, United States Code, Section 1111.

SAMUEL T. CURRIN
United States Attorney

By: M. F. BOGDANOS
Special Assistant U.S. Attorney

By: James S. Perry
Asst. U.S. Attorney

FILED IN OPEN COURT
ON JULY 8, 1986
J. Rich Leonard, Clerk
U.S. District Court
Eastern District of N.C.

CERTIFICATION

TO: THE HONORABLE, THE CHIEF JUDGE W. EARL BRITT, FEDERAL COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA:

This is to certify that in the case of ***THE UNITED STATES OF AMERICA v. A JUVENILE MALE***, no juvenile court or other appropriate court of any state, including the General Court of Justice of the State of North Carolina, has jurisdiction over said juvenile with respect to the acts of juvenile delinquency alleged in this case, such acts having occurred on Marine Corps Base, Camp Lejeune, North Carolina, a military reservation acquired for the use of the United States and under exclusive jurisdiction thereof.

This certificate is made pursuant to the requirements of Title 18, United States Code, Section 5032, and is made by the United States Attorney for the Eastern District of North Carolina on the basis of authority delegated to him by the Attorney General of the United States. (Attorney General Order No. 579-74, 28 C.F.R. 0.57.).

This 7th day of July, 1986.

SAMUEL T. CURRIN
United States Attorney

By: M. F. Bogdanos
Special Assistant U.S. Attorney

By: James S. Perry
Asst. U.S. Attorney

FILE NO. 88 CrS 20823, 20824, 20825
FILM NO. _____

NORTH CAROLINA
ONSLOW COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA)
)
vs.) MOTION TO DISMISS FOR
) LACK OF JURISDICTION
CARLTON J. SMITH,)
Defendant.)

NOW COMES the defendant, Carlton J. Smith, by and through his court-appointed counsel, Richard L. Cannon, III and Charles H. Henry, Jr. undersigned, and respectfully moves this honorable Court to dismiss the indictments returned against the defendant on December 13, 1988 for lack of jurisdiction.

In support of this motion, defendant shows the Court that Smith was fifteen years of age when the incidents occurred from which the charges arose. The incidents occurred on Camp LeJeune Marine Corps Base, an area of exclusive federal jurisdiction. Smith was prosecuted by federal authorities pursuant to 18 U.S.C. § 5032.

THEREFORE, Smith moves this Court to dismiss the indictments returned herein for lack of jurisdiction.

This the 13th day of February, 1989.

ELLIS, HOOPER, WARLICK,
WATERS & MORGAN

RICHARD L. CANNON, III
Attorney for the Defendant
209 South Evans Street
Post Office Box 8523
Greenville, North Carolina 27835
Telephone: (919) 758-2010

BY: CHARLES H. HENRY, JR.
Attorney for Defendant
313 New Bridge Street
Post Office Drawer 1006
Jacksonville, NC 28541
Telephone: (919) 455-3637)

20 October 1971	41 N.C.A.G. 580
Subject:	Infants and Incompetents; Custody; Jurisdiction of State Courts Over Federal Reservation
Requested by:	Lieutenant Colonel R. W. Edwards U.S. Marine Corps Staff Judge Advocate
Question:	What is the appropriate court to exercise jurisdiction over the custody of an abused or neglected child residing within the confines of Marine Corps Base, Camp Lejeune, North Carolina?
Conclusion:	The District Court Division of the General Court of Justice of North Carolina wherein Camp Lejeune is located has jurisdiction over the custody of an abused or neglected child residing within the confines of Marine Corps Base, Camp Lejeune, North Carolina.

By G.S. 104-7 the State of North Carolina has consented to the acquisition of land within the State by the United States and, aside from reserving the right to serve civil and criminal process, has ceded to the federal government exclusive jurisdiction over land so acquired. 40 U.S.C.A. 255 requires that, in order for the federal government to acquire this jurisdiction, it must be accepted by the appropriate federal official and notice of the acceptance must be filed with the state authorities. Between June, 1941, and June, 1946, the United States, by various letters addressed to the Governor of the State, gave notification of acceptance of exclusive jurisdiction over virtually all of Camp Lejeune.

However, the particular field of domestic relations, including adjudication as to the custody of an abused and neglected child, is exclusively one belonging to the states, not to the federal government. ***State of Ohio v. Agler***, 280 U.S. 379; ***McCarty v. Hollis***, 120 F.2d 540. Therefore, since the United States has no authority to exercise jurisdiction in the area of custody of abused and neglected children, it is incapable of accepting jurisdiction thereof. As a result, absent state jurisdiction over this matter, no means would exist for safeguarding the welfare of these children--a situation violative of the basic legal principle that no area, however small, will be left without a developed legal system for the protection of private rights. ***State v. Burell***, 26 N.C. 288; ***James Stewart and Co. v. Sadrakula***, 309 U.S. 94.

Additionally, it is a general rule of public law that whenever jurisdiction and legislative powers over a territory are transferred from one sovereign to another, laws designed to assure good order and peace to the community and to promote its health and prosperity remain in force until they are abrogated or changed by the new government. This general rule is equally true of transfers of exclusive jurisdiction from a state to the federal government, provided that there is no interference with the exercise of the jurisdiction intended to be transferred. ***Chicago, Rock Island and Pacific Railway Company v. McGlinn***, 114 U.S. 542; ***James Stewart and Co. v. Sadrakula***, supra. The principle of applicability of state statutes to exclusive jurisdiction federal enclaves is normally limited to prior existing state statutes. However, if the basic state laws or the basic scheme for guaranteeing the welfare of the individuals residing in the area antedates the jurisdictional transfer, changes in the regulatory means of implementing the basic scheme should not preclude the state's exercise of jurisdiction in the area of law involved. ***Paul v. United States***, 371 U.S. 245.

In view of the inability of the federal government to accept or exercise jurisdiction over the custody of an abused or neglected child, despite the transfer of "exclusive" jurisdiction, the State of North Carolina was never actually divested of jurisdiction over these cases.

The current North Carolina statutes governing the processing of cases of this sort (G.S. 7A-277 through 289) were adopted subsequent to the assumption of jurisdiction over the situs of Camp Lejeune by the United States; nevertheless, they are the outgrowth of statutes dealing with the same general subject which existed prior to and at the time of the transfer of jurisdiction of the Camp Lejeune situs to the federal government. Inasmuch as they fill what would otherwise be a void, these state statutes obviously do not interfere with the exclusivity of jurisdiction as exercised by the United States in all other matters and are controlling in cases involving the custody of abused or neglected children.

Robert Morgan
Attorney General